REMARKS

In response to the above-identified Office Action ("Action"), Applicants traverse the Examiner's rejection to the claims and seek reconsideration thereof. Claims 1 and 4-15 are now pending in the present application. Claims 1 and 4-15 are rejected. In the instant response, claims 1 and 15 are amended, claim 5 is cancelled and no claims are added.

I. Claim Amendments

Applicants respectfully submit herewith amendments to claims 1 and 15. In particular, claims 1 and 15 are amended to recite that the composition is "free of an alpha-hydroxy acid." Support for the amendments to claims 1 and 15 may be found, for example, on page 3, paragraph [0013] of the Application. Since the amendments are supported by the specification and do not add new matter, Applicants respectfully request reconsideration and entry of the amendments to claims 1 and 15.

II. Claim Rejections – 35 U.S.C. §103

A. In the outstanding Action, the Examiner rejects claims 1, 4, 5, 7 and 13 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,818,523 issued to Clarke et al. ("Clarke"). Applicants respectfully traverse the rejection.

To establish a *prima facie* case of obviousness, the Examiner must set forth "some articulated reasoning with some rational underpinning to support the conclusion of obviousness." See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007). In the case where the Examiner relies upon the rational of applying a known technique to improve a similar device, method or process, the Examiner must show that the results would have been predictable to one of ordinary skill in the art. See *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103*, Section III(D), issued by the U.S. Patent and Trademark Office on October 10, 2007.

Applicants respectfully submit claim 5 is cancelled therefore the rejection on this basis is moot.

In regard to independent claim 1, Applicants respectfully submit Clarke fails to disclose or render predictable at least the element of "wherein the composition is free of an alpha-hydroxy acid and has a pH in a range of 2.8 to 3.2" as recited in amended claim 1. Applicants respectfully submit the claimed composition achieves a low pH in the absence of an acid. As a result, the composition exfoliates and moisturizes the skin without irritating the skin.

As admitted by the Examiner, Clarke discloses a composition having a pH in the range of 3-4 which includes an alpha-hydroxy acid and/or citric acid. Nowhere within Clarke is it contemplated that the disclosed composition is acid free or that the pH range of 3-4 could be achieved in the absence of an acid. In fact, as admitted by the Examiner, Clarke expressly discloses that citric acid is used to adjust the pH of the composition. See Action, page 2. Thus, for at least the foregoing reasons Clarke fails to disclose or render predictable the claimed composition "wherein the composition is free of an alpha-hydroxy acid and has a pH in a range of 2.8 to 3.2." Since each of the elements of claim 1 are not disclosed by the prior art, a *prima facie* case of obviousness may not be established. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. §103.

In regard to claims 4, 7 and 13, these claims depend from claim 1 and incorporate the limitations thereof. Thus, for at least the reasons that claim 1 is not *prima facie* obvious over Clarke, claims 4, 7 and 13 are further not obvious in view of the prior art. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 4, 7 and 13 under 35 U.S.C. §103.

B. In the outstanding Action, the Examiner rejects claims 1, 4, 6-9 and 11-15 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,709,773 issued to Espinoza ("Espinoza") in view of *Cosmetic and Toiletry Formulations* by Flick ("Flick_1"). Applicants respectfully traverse the rejection.

In regard to independent claims 1 and 15, Applicants respectfully submit Espinoza and Flick_1 fail to disclose or render predictable at least the element of "wherein the composition is free of an alpha-hydroxy acid" and has a pH in a range of 2.8 to 3.2 (claim 1) or less than 3.5 (claim 15). As previously discussed, the claimed composition achieves a low pH in the absence

of an acid. The claimed low pH ranges and resulting properties would not be predictable in view of acidic compositions because one of skill in the art would expect the pH of a composition to increase in the absence of an acid.

As admitted by the Examiner, Espinoza discloses an alpha-hydroxy acid (AHA) cream composition. Flick_1 discloses a lotion including glycolic acid. The Examiner alleges it would be obvious to adjust the pH in Espinoza to within the claimed range in view of Flick_1. Nowhere within Espinoza or Flick_1 is it contemplated that the disclosed compositions could be acid free or that a pH range of 3-3.5 could be achieved in the absence of an acid. Thus, for at least the foregoing reasons Espinoza and Flick_1 fail to disclose or render predictable the claimed composition "wherein the composition is free of an alpha-hydroxy acid" and has a pH in a range of 2.8 to 3.2 (claim 1) or less than 3.5 (claim 15). Since each of the elements of claim 1 are not disclosed by the prior art, a *prima facie* case of obviousness may not be established. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1 and 15 under 35 U.S.C. §103.

In regard to claims 4, 6-9 and 11-14, these claims depend from claim 1 and incorporate the limitations thereof. Thus, for at least the reasons that claim 1 is not *prima facie* obvious over Espinoza and Flick_1, claims 4, 6-9 and 11-14 are further not obvious in view of the prior art. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 4, 6-9 and 11-14 under 35 U.S.C. §103.

C. In the outstanding Action, the Examiner rejects claim 10 under 35 U.S.C. §103(a) as being unpatentable over Espinoza in view Flick_1 as applied to claims 1, 4, 6-9 and 13-15, and further in view of *Cosmetics Additives* by Flick ("Flick_2"). Applicants respectfully traverse the rejection.

Claim 10 depends from claim 1 and incorporates the limitations thereof. Thus, for at least the reasons previously discussed in regard to claim 1, Espinoza and Flick_1 fail to disclose or render predictable at least the element of "wherein the composition is free of an alpha-hydroxy acid and has a pH in a range of 2.8 to 3.2" as further found in claim 10. The Examiner has further not pointed to and Applicants are unable to discern a portion of Flick_2 curing the deficiencies of

Espinoza and Flick$_1$ with respect to at least this element. Since each of the elements of claim 10 are not disclosed by the prior art, a *prima facie* case of obviousness may not be established. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 10 under 35 U.S.C. §103.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1, 4 and 6-15, are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on November 13, 2007.

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Si Vuong